

Exhibit 46

WESTPOINT HARBOR

RECEIVED
OCT 24 2005SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION**FACSIMILE TRANSMITTAL
SHEET****TARGET FAX NUMBER: 415 352 3606**

DATE: October 23, 2005

FROM: Mark Sanders, Westpoint Marina

TO: Andrea Gaut, BC DC

SUBJECT: Easement Agreements with Pacific Shores Center

Andrea, as promised I have attached the easement agreements with Pacific Shores will finally allow me to construct the two vehicle crossings between our two properties with sufficient width to allow pedestrians a safe path, as well as the extension to the Bay Trail along side Westpoint Channel.

All work that must be done on PSC property will be done this month, and as we discussed at the Restoration Project meeting, we will proceed while you sort out any required modification to PSC's permit. The impact of our work will be a narrow trench across the path for a few days while water pipe is placed.

Regards,

mark



AGREEMENT REGARDING EASEMENT

This Agreement Regarding Easement ("Agreement") is made as of June __, 2005 by and between PACIFIC SHORES INVESTORS, LLC, a Delaware limited liability company, as grantor ("Pacific Shores Center") and Mark L. Sanders, a married man, as his separate property, as grantee ("Sanders").

R E C I T A L S :

A. Pacific Shores Center is the owner of that certain real property in San Mateo County, California, hereinafter called the "Pacific Shores Center Property," and more particularly described on Attachment 1 attached hereto and incorporated herein.

B. Sanders is the owner of certain real property in San Mateo County, California, hereinafter called the "Sanders Property" and more particularly described in Attachment 2 attached hereto and incorporated herein.

C. Cargill, Inc., a Delaware corporation ("Cargill"), is the predecessor-in-interest of Sanders with respect to the Sanders Property.

D. Pacific Shores Center Limited Partnership, a Delaware limited partnership ("PSCLP") is the predecessor-in-interest of Pacific Shores Center with respect to the Pacific Shores Center Property.

E. PSCLP and Cargill entered into that certain Grant of Easement executed February 9, 1999 and recorded as Instrument No. 99-076171 on April 29, 1999, official records of San Mateo County, California (the "Easement") affecting the Pacific Shores Center Property and the Sanders Property.

F. Cargill assigned to Sanders all of Cargill's rights granted to Cargill under the Easement, pursuant to that certain Grant Deed to Sanders executed by Cargill on December 20, 2001 and recorded as Instrument Number 2002-050219 on March 15, 2002, Official Records of San Mateo County, California (the "Grant Deed").

G. Pacific Shores Center and Sanders have concurrently entered into an Amendment to Easement, a copy of which is attached hereto as Attachment 3.

H. Sanders intends to develop the Sanders Property as a public marina and for ancillary uses (the "Westpoint Marina and Boatyard") and requires this Agreement with Pacific Shores Center in connection therewith.

NOW, THEREFORE, Pacific Shores Center, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agrees with Sanders as follows:

1. Definitions. The capitalized terms used in this Amendment shall have the same definitions as set forth in the Easement to the extent that such capitalized terms are defined therein and not redefined in this Amendment.

2. Notice of Work of Improvement. At Sanders's sole expense, Sanders shall provide to Pacific Shores Center for approval a detailed written notice with respect to the work of improvement which shall be undertaken by Sanders within the Pacific Shores Center Property prior to undertaking any such work of improvement, specifically including the work described in Paragraphs 5, 6, 9 and 13 below, and in the Westpoint Marina and Boatyard improvements depicted on the attachments and Site Preparation Plan identified in Paragraph 14 below. Such written notice will be provided to Pacific Shores Center at least fifteen (15) working days prior to commencement of the work of improvement. Pacific Shores Center will either grant or withhold its consent by reply given within fifteen (15) days after receipt of request therefor, provided that such consent will not be unreasonably withheld or delayed. If Pacific Shores Center fails to give consent within said fifteen (15) days, consent shall be deemed to have been withheld. Written notice will set forth the following specific information:

(a) a detailed construction schedule including the start date and the end date of the work of improvement; and

(b) final working drawings, which shall include any applicable structural, mechanical and electrical working drawings and final architectural drawings for such work (collectively, "Final Working Drawings"). The Final Working Drawings shall conform to the document entitled "Site Preparation Plan for Westpoint Marina and Boatyard" dated November 24, 2003 and prepared by Bohley Consulting.

3. As-Builts. At Sanders's sole expense, subsequent to completing the work of improvement, Sanders shall provide to Pacific Shores Center as-built final working drawings which drawings shall reflect any differences in the final work product from the final working drawings referenced in subparagraph 2(b) above.

4. Truck Road. All trucks and other vehicles which are utilized for the purpose of delivering to the Sanders Property the landfill, construction equipment, and all construction materials required for the development of the Sanders Property shall be operated in a manner which shall minimize disruption to the occupants of the Pacific Shores Center Property. Specifically, such vehicles shall not be allowed to operate on the private portion of Seaport Boulevard. Sanders has constructed and shall maintain a separate road (the "Truck Road") running along the property line of the Pacific Shores Center Property from the intersection of the Pacific Shores Center Property with the public portion of Seaport Boulevard and continuing northeasterly to the southwesterly corner of the Sanders Property for the purpose of carrying such traffic. The Truck Road shall be watered as required to control dust from passing traffic during the construction process. Smaller, two-axle vehicles may access the Sanders Property using the private portion of Seaport Boulevard located within the Pacific Shores Center Property as required for construction of the marina.

5. Temporary Power Connection. As a consequence of the construction of the Truck Road, Sanders will be required to connect temporary power to the Sanders Property. PG&E has

a small power transformer located near the boundary of the Pacific Shores Center Property and the Sanders Property at the location depicted in the rendering attached hereto as Attachment 4. Sanders is hereby permitted to erect a single pole where indicated on Attachment 4 to deliver power to the Sanders Property until such time as underground power utilities have been completed connecting the Sanders Property to the underground utilities in the private portion of Seaport Boulevard located on the Pacific Shores Center Property.

6. Extended Path. A portion of the Pacific Shores Center Property is improved with a jogging/bike path (the "Path") generally located along the easterly boundary of the Pacific Shores Center Property. Sanders desires, at Sanders's sole cost and expense, to extend the Path, built to matching specifications with respect to dimension, materials and quality of construction, to join the northerly boundary of the Sanders Property in an easterly extension of the Path ("Path Extension"), the precise location of which Path Extension is depicted in the rendering attached hereto as Attachment 5. Sanders is hereby permitted to construct the Path Extension.

7. Compliance. All construction work in connection with the development of the Sanders Property shall be undertaken in compliance with the regulations of all state and federal agencies having jurisdiction over the development of the Sanders Property. This requirement shall be construed to include, but not be limited to, noise and dust control regulations contained in the Redwood City building regulations.

8. Responsibility/Insurance. Sanders shall be responsible for any property damage to the Pacific Shores Center Property resulting from any construction activities taking place on the Sanders Property and shall keep the Pacific Shores Center Property clear of dirt and debris at all times during the development of the Sanders Property. In this regard, Sanders shall provide to Pacific Shores Center a copy of a rider to the commercial general liability policy of the general contractor in charge any work of improvement undertaken pursuant to the provisions of this Agreement, naming Pacific Shores Center as an additional insured thereunder.

9. Connection to Sewer. The connection of the Sanders Property sewer line to the sewer line located within the Pacific Shores Center Property and a second domestic water connection shall occur by running the connecting pipes under the Emergency Access Road and connecting the sewer force main to a point in the parking lot immediately to the south of 1500 Seaport Boulevard. Connection to other utilities shall occur in an area proximate to the Cargill Connection. Connection to both the sewer and the other utilities shall be carried out in such a way as to minimize disruption and damage to Pacific Shores Center Property, taking place, to the extent reasonably practicable, on weekends. Specifically, Pacific Shores Center employees and tenants shall have continued access to Pacific Shores Center during construction, with any necessary trenching to be commenced and completed as soon as reasonable practicable following the delivery to and approval by Pacific Shores Center of the plans and detailed schedule for such work, including the path of travel shown on site maps for routing traffic around such portion the road affected by the trenching, utilizing flagmen and any other necessary personnel, so as to allow tenants and employees of Pacific Shores Center to have an uninterrupted flow of vehicular traffic around such work of construction.

10. Drainage Ditch Pipe and Flap Gate Structure. Sanders shall modify, construct and install that certain thirty-inch drainage ditch pipe and flap gate structure (the "Drainage Ditch

Pipe and Flap Gate Structure") identified in the Army Corps of Engineers and BCDC permit applications submitted by Sanders with respect to the development of the Sanders Property (the "Drainage Ditch/Flap Gate Work"), Twenty-Nine Thousand Dollars (\$29,000.00) of the cost of which (the "Adjustment") shall be deducted, pursuant to the procedures set forth in Paragraph 16 below, from the \$60,000 payment delivered by Sanders to Pacific Shores Center in consideration of the execution and delivery of this Agreement by Pacific Shores Center.

11. Reciprocal Maintenance Obligations and Self-Help Rights. Pacific Shores Center shall be responsible for maintenance costs with respect to the private sewage system in Pacific Shores Center, as connected to the Sanders Property sewer line. Sanders shall be responsible for maintenance costs with respect to the storm water drainage system in the Drainage Ditch Pipe and Flap Gate Structure. If maintenance work is required but not promptly undertaken following receipt of notice from the other party, which notice shall be in writing unless in the context of an emergency, the reasonable costs of such maintenance shall be promptly paid by the responsible party under this Paragraph 11 upon receipt of reasonably particularized evidence of such reasonable costs.

12. Reciprocal Parking Rights. Following completion of the Sanders Property parking facilities, the occupants of the Pacific Shores Center Property shall be entitled to park thereon during weekdays, without charge, subject to reasonable parking rules and regulations promulgated by Sanders and approved by Pacific Shores Center, and the occupants of the Sanders Property shall be entitled to park on the Pacific Shores Center Property during weekends and holidays, without charge, subject to reasonable parking rules and regulations promulgated by Pacific Shores Center and approved by Sanders.

13. Phased Landscaping. The development of the Sanders Property is planned to take place in three phases. At the end of the first phase the areas to be developed in later phases will be landscaped in a manner consistent with the other landscaping of the marina until commencement of these latter phases is begun.

14. Repairs. All roads, curbs and landscaping located on the Pacific Shores Center Property which are disrupted during the development of the Sanders Property shall be repaired at Sanders's cost to a condition reasonably acceptable to Pacific Shores Center. The landscape contractor will be specified by Pacific Shores Center.

15. Site Plan. Sanders hereby certifies to Pacific Shores Center that the site plan for the Westpoint Marina and Boatyard attached hereto as Attachment 6 is a substantially accurate description of the development that shall be undertaken by Sanders on the Sanders Property, including the relative location of the retail/commercial improvements depicted on the westerly portion of the Sanders Property and the boatyard improvements on the easterly portion of the Sanders Property, pursuant to the rendering set forth on Attachment 6. Sanders hereby agrees that no material change to the site plan which directly affects Pacific Shores Center, the Easement areas or the drainage ditch served by the Drainage Ditch Pipe and Flag Gate Structure will be made without the prior written approval of Pacific Shores Center, which consent will not be unreasonably withheld or delayed, and Sanders further agrees that the work which takes place on Pacific Shores Center property will not differ from either the summary description contained in Attachment 7 or the document entitled "Site Preparation Plan for Westpoint Marina and

Boatyard" dated November 24, 2003 and prepared by Bohley Consulting without prior written consent from Pacific Shores Center.

16. Payment. Concurrently with the full execution and delivery of this Agreement, and in consideration of the execution hereby by Pacific Shores Center, Sanders shall pay to Pacific Shores Center the sum of Thirty-One Thousand Dollars (\$31,000), and shall be obligated to complete the Drainage Ditch/Flap Gate Work not later than the opening date for the West Point Marina and Boatyard.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

PACIFIC SHORES CENTER:

PACIFIC SHORES INVESTORS, LLC,
a Delaware limited liability company

By: 

Name: Jay Paul

Title: _____

SANDERS:



MARK L. SANDERS

Attachment 3

Amendment to Easement

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

ALLEN MATKINS LECK GAMBLE
& MALLORY LLP

Three Embarcadero Center, 12th Floor
San Francisco, California 94111-4074

Attention: Richard C. Mallory

MAIL TAX STATEMENTS TO:

PACIFIC SHORES INVESTORS, LLC
c/o JAY PAUL COMPANY
350 CALIFORNIA STREET
SUITE 1905
SAN FRANCISCO, CA 94104
ATTN: RAY PAUL

Transfer Tax: [none due
consideration less than \$100
Revenue & Taxation Code § 11911]

(Space Above For Recorder's Use)

AMENDMENT TO EASEMENT

This Amendment to Easement ("Agreement") is made by and between PACIFIC SHORES INVESTORS, LLC, a Delaware limited liability company, as grantor ("Pacific Shores Center") and Mark L. Sanders, a married man, as his separate property, as grantee ("Sanders").

RECITALS:

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B. Sanders is the owner of certain real property in San Mateo County, California, hereinafter called the "Sanders Property" and more particularly described in Attachment 2 attached hereto and incorporated herein.

C. Cargill, Inc., a Delaware corporation ("Cargill"), is the predecessor-in-interest of Sanders with respect to the Sanders Property.

D. Pacific Shores Center Limited Partnership, a Delaware limited partnership ("PSCLP") is the predecessor-in-interest of Pacific Shores Center with respect to the Pacific Shores Center Property.

E. PSCLP and Cargill entered into that certain Grant of Easement executed February 9, 1999 and recorded as Instrument No. 99-076171 on April 29, 1999, official records of San Mateo County, California (the "Easement") affecting the Pacific Shores Center Property and the Sanders Property.

F. Cargill assigned to Sanders all of Cargill's rights granted to Cargill under the Easement, pursuant to that certain Grant Deed to Sanders executed by Cargill on December 20, 2001 and recorded as Instrument Number 2002-050219 on March 15, 2002, Official Records of San Mateo County, California (the "Grant Deed").

G. Pacific Shores Center and Sanders desire to amend the Easement as set forth herein.

NOW, THEREFORE, Pacific Shores Center and Sanders, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby amend the Easement as follows:

1. Defined Terms. The capitalized terms used in this Agreement shall have the same definitions as set forth in the Easement to the extent that such capitalized terms are defined therein and not redefined in this Agreement.

2. Cargill Connection. Attachment 4 to the Easement, defining the area of the Cargill Connection, is hereby amended to be the area defined in Attachment 3 hereto.

3. Emergency Access Road Area. Sanders shall have the right to construct an emergency access road over the area within the Pacific Shores Center Property described in Attachment 4 to this Agreement (the "Emergency Access Road Area"). The use of the Emergency Access Road is hereby restricted to use by the County of San Mateo and City of Redwood City for emergency access to the Sanders Property and for the installation of underground utilities as described below in this Paragraph 3. Access to normal traffic through the Fire Road Area shall be blocked, at the sole discretion of Pacific Shores Center, using bollards acceptable to Pacific Shores Center, the County of San Mateo and the City of Redwood City. The installation of underground utilities referenced above shall be connected to the extension of Seaport Boulevard which is a private street belonging to Pacific Shores Center as shown in the Pacific Shores Center Subdivision Map recorded at Volume 130 of Maps at pages 66 - 74 as Instrument No. 2000 - 089113. The private street is the location of the underground utilities.

4. No Other Changes. Except as herein modified or amended, the provisions, conditions and terms of the Easement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF the parties have executed this Agreement as of this ____ day of June, 2005.

PACIFIC SHORES CENTER:

PACIFIC SHORES INVESTORS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

SANDERS:

MARK L. SANDERS

Attachment 3 to Amendment to Easement

Amended Area of the Cargill Connection

Beginning at "Point A" as said point is described in Attachment 3 in that document recorded at Recorder's Number 99-076171, San Mateo County Recorder; thence northeasterly across Lots I and H as said Lots are shown on that certain map recorded in Volume 130 of Maps at Pages 66 through 74, inclusive, along the arc of a 458.00 foot radius curve to the right, tangent to a line which bears North 41°28'45" East, through a central angle of 2°58'08", an arc length of 23.73 feet; thence South 45°33'07" East 1.00 feet to a point on the southwesterly line of Lot E as said Lot is shown on said Map; thence across Lots E and F, as said Lots are shown on said Map, along the arc of a 20.00 foot radius curve to the left, tangent to a line which bears South 44°26'53" West, through a central angle of 105°15'54", an arc length of 36.71 feet; thence northeasterly along the northeasterly line of said easement along the arc of a 136.50 foot radius curve to the left, tangent to a line which bears South 60°49'01" East, through a central angle of 11°41'00", an arc length of 27.83 feet to a point on the easterly line of Lot F as said Lot is shown on the certain map recorded in Volume 130 of Maps at Pages 66 through 74 inclusive; thence southerly along the easterly line of Lot F along the arc of a 120.00 foot radius curve to the left, tangent to a line which bears South 11°46'18" East, through a central angle of 17°42'27", an arc length of 37.09 feet; thence leaving said easterly line of Lot F and across Lot F along the arc of a 172.50 foot radius curve to the right, tangent to a line which bears North 75°35'26" West, through a central angle of 24°07'45", an arc length of 72.65 feet to a point of cusp; thence along the arc of a 20.00 foot radius curve to the left, tangent to a line which bears South 69°10'24" West, through a central angle of 32°53'31", an arc length of 11.48 feet to a point on the southeasterly line of Lot I as said Lot is shown on said Map; thence leaving said southeasterly line of Lot I and across Lot I, North 54°24'49" West 1.00 feet to a point on the southeasterly line of that certain easement described in Attachment 3 in that document recorded at Recorder's Number 99-076171, San Mateo County Recorder; thence northeasterly along said southeasterly line as described in Attachment 3 along the arc of a 458.00 foot radius curve to the right, tangent to a line which bears North 35°35'11" East, through a central angle of 5°53'34", an arc length of 47.10 feet to the point of beginning.

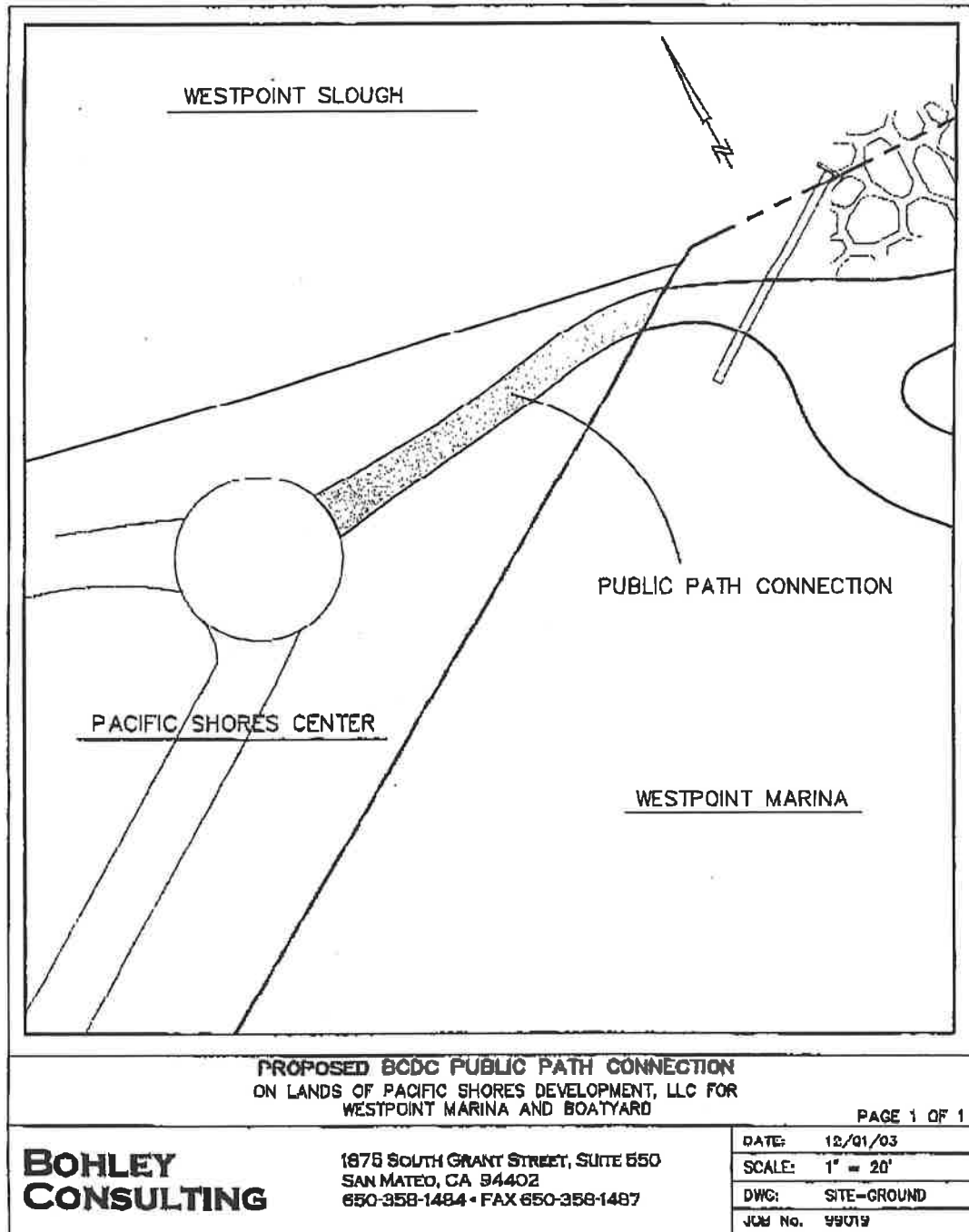
Attachment 4 to Amendment to Easement

The Emergency Access Road Area

Beginning at the southerly terminus of that certain course shown as "South 56°53'00" West 257.33 feet in the southeasterly line of Lot H as said lot is shown on that certain Subdivision Map entitled "Pacific Shores Center", which Map is recorded in Volume 130 of Subdivision Maps at Pages 66 through 74, inclusive; thence northerly along said southeasterly line of Lot H North 56°53'00" East 30.90 feet; thence leaving said southeasterly line and across Lot E as shown on said Map along the arc of a 19.00 foot radius curve to the left, tangent to a line which bears South 56°53'00" West, through a central angle of 90°00'00", an arc length of 29.85 feet; thence South 33°07'00" East 18.40 feet to a point on the southeasterly line of Lot E; thence southwesterly along the southeasterly line of Lot E, South 56°53'00" West 28.00 feet; thence leaving last said southeasterly line and across Lot E North 33°07'00" West 16.56 feet; thence along the arc of a 19.00 foot radius tangent curve to the left, through a central angle of 93°11'15", an arc length of 30.90 feet to a point on the southeasterly line of Lot H; thence northeasterly along said southeasterly line North 53°41'45" East 30.73 feet; thence along the arc of a 99.00 foot radius tangent curve to the right, through a central angle of 03°11'15", an arc length of 5.51 feet to the Point of Beginning and containing 1209 square feet, more or less.

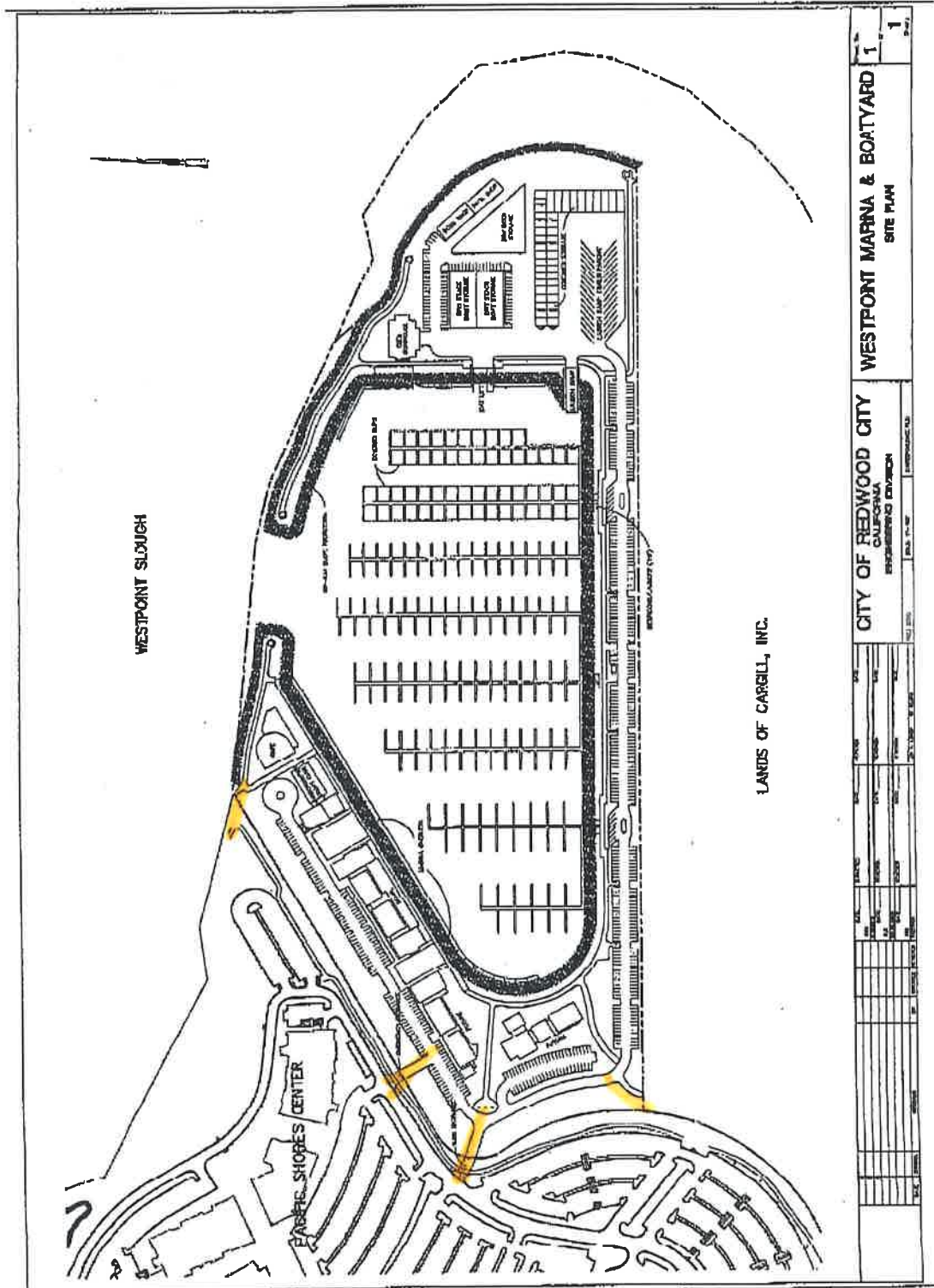
Attachment 5

Location of Path Extension



Attachment 6

Site Plan of Marina



basequint